

Jared Dahle
Nicholas J. Lofing
GARLINGTON, LOHN & ROBINSON, PLLP
350 Ryman Street • P. O. Box 7909
Missoula, MT 59807-7909
Telephone (406) 523-2500
Telefax (406) 523-2595
jdahle@garlington.com
njlofing@garlington.com

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ANGIE SPARKS, Clerk of District Court
BY *[Signature]* Deputy Clerk

Attorneys for Plaintiff

MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS & CLARK COUNTY *(email)*

MONTANA ASSOCIATION OF
COUNTIES,

Plaintiff,

v.

PUBLIC EMPLOYEES' RETIREMENT
BOARD OF THE STATE OF
MONTANA, AND MONTANA PUBLIC
EMPLOYEES' RETIREMENT
ADMINISTRATION,

Defendants.

Dept. No. DDV 2020-741 pd ✓
Cause No. _____ (2)

COMPLAINT FOR DECLARATORY
JUDGMENT, INJUNCTIVE RELIEF
AND WRIT OF PROHIBITION

JAMES P. REYNOLDS
Presiding Judge

I. INTRODUCTION

Plaintiff Montana Association of Counties ("MACo"), acting through its counsel, Garlington, Lohn & Robinson, PLLP, respectfully requests this Court to enter a declaratory judgment that the Defendants Public Employees' Retirement Board of the State of Montana ("MPERB") and Montana Public Employees' Retirement Administration ("MPERA") lack the plenary authority to assess, collect, or enforce

claimed amounts owing as unfunded pension liabilities when a county reduces its workforce resulting in fewer employees participating in the State's pension plans, as well as other relief.

II. PARTIES, JURISDICTION AND VENUE

1. Plaintiff MACo is a Montana non-profit public benefit corporation in active, good standing with the State of Montana, organized to represent the interests of Montana's counties, and includes in its membership both Lewis & Clark County and Cascade County, and further advocates on behalf of all 56 member counties.

2. Defendant MPERB is seven-member board provided for in Montana Code Annotated § 2-15-1009, that, together with Defendant MPERA, administers the State's eight retirement systems.

3. Defendant MPERA is a division of the State of Montana charged with administering the State's retirement systems.

4. Venue is proper in this Court.

5. This Court has personal jurisdiction over the parties and subject matter jurisdiction over this matter. Mont. Const. art. III, § 1.

6. The matter is ripe for adjudication and presently justiciable. Judgment or decree would terminate the uncertainty or controversy giving rise to these proceedings.

7. There is an actual dispute between the Plaintiff and MPERB concerning the authority of the MPERB to assess and compel the payment of pension liabilities deemed unfunded by MPERB as a result of reductions in workforce by Montana counties.

III. COMMON FACTS

8. On January 29, 2020, MPERB petitioned the Supreme Court of Montana to accept original jurisdiction and issue an expedited declaratory judgment that the Montana Constitution vested MPERB with the authority to assess and compel the payment of allegedly unfunded pension liabilities accruing upon Lewis & Clark County's reduction of approximately 60 employees who formerly participated in a State pension plan administered by MPERB.

9. MACo intervened in the Supreme Court proceedings, opposing MPERB's Petition on procedural and substantive grounds.

10. Cascade County intervened in the Supreme Court proceedings, opposing MPERB's Petition on procedural and substantive grounds.

11. The Supreme Court denied MPERB's Petition on April 21, 2020.

12. MPERB administers eight separate retirement systems, including the Montana Public Employees' Retirement System ("PERS"). Mont. Code Ann. §§ 19-3-101 et seq.

13. PERS is the retirement system for most state and local public employees. It has 519 enrolled employers. The State employs approximately 35% of the PERS employees.

14. MPERB administers PERS, Montana Code Annotated § 2-15-1009, as well as separate retirement plans for judges, teachers, highway patrol officers, sheriffs, game wardens, police and fire fighters. *See* Montana Code Annotated Title 19, Chs. 5-9, 13, and 20.

IV. FACTUAL BACKGROUND RELATED TO MACo's INTERESTS

15. MACo is the “voice of Montana’s 56 Counties” with a mission to educate and advocate for policies, programs, and laws that enhance the public service mission of counties.

16. MACo is a membership organization that is partially funded by and advocates on behalf of County governments like Lewis & Clark and Cascade Counties. Montana counties will be administratively and financially responsible for paying and funding MPERA’s demands for all former employees if MPERA’s demands – like those against Cascade and Lewis & Clark County – succeed.

17. MACo brings this matter to assert and protect the interests of its members, as well as its own interests. MACo has representative standing to request the declaratory and other relief sought herein.

18. Montana’s counties will face adverse effects and unnecessarily restricted governance options if MPERB is permitted to threaten or execute collection actions in the manner presented herein against Lewis & Clark County and Cascade County.

19. Local governments must have the ability to make decisions to restructure and reduce forces when necessary to allow for the continuation of services, without the arbitrary imposition of a severe penalty. MPERB’s after-the-fact practice of issuing penalties, as it did against Lewis & Clark County and Cascade County, has a devastating impact on local government governance and the necessary services counties provide.

20. MPERB’s Petition to the Montana Supreme Court identified three Counties – Lewis & Clark, Cascade, and Toole County – as well as “similarly situated local

governmental entities” as taking actions that create a risk to the PERS system.

21. MPERB has taken no known similar action against similarly situated State departments, cities, or other local governmental agencies that reduced their workforce, resulting in loss of employee enrollment in the pension system.

22. All 56 of Montana’s counties are enrolled in the PERS system, comprising 56 of the 519 employers enrolled in the PERS system.

V. FACTS RELATED TO LEWIS & CLARK COUNTY

23. In 1947, Lewis & Clark County entered a contract with MPERB’s successor for participation in the state’s pension system (the “1947 Contract”).

24. In 2019, Lewis & Clark County, by its Commission, explored and undertook preliminary steps to transition approximately 60 County employees working at the PureView Health Center (“Heath Center”) to the independent non-profit that administers the Health Center (“PureView”).

25. Since 1994 and until February 29, 2020, the Health Center operated as a “Federally Qualified Health Center” in Helena, Montana. In order to receive federal funding as a Federally Qualified Health Center in accordance with Section 330 of the Public Health Service Act, 42 U.S.C. Ch. 1, et seq., Lewis & Clark County and PureView applied for funding as co-applicants and entered into a co-application agreement. Under the terms of the agreement, PureView as the non-profit organization provided governance and administration to the Health Center. Lewis & Clark County provided, among other things, human resource services, employees, fiscal management, accounting, information technology services, and other general administrative services. As Lewis & Clark

County employees, the employees who worked at the Health Center were enrolled in PERS as is required for all local government employees.

26. The County and PureView began exploring separation options in 2019 to allow PureView to operate solely and independently. The County convened several meetings regarding the transition of the County employees to the non-profit entity PureView. Representatives of MPERA were present for these meetings and did not raise objections or notify that the County would incur a withdrawal penalty.

27. There is no precedent for MPERB or MPERA assessing withdrawal penalties against an employer participant who experiences a reduction in workforce, other than as described herein.

28. The County signed a separation agreement with PureView in August 2019, and in September 2019, the Lewis & Clark County Commission approved the separation, which was to be accomplished by the end of February 2020. The separation resulted in approximately 60 County employees becoming employees of the non-profit PureView and therefore unable to remain enrolled in the PERS system.

29. On October 15, 2019, MPERA sent Lewis & Clark County a demand that it pay a withdrawal penalty in the amount of \$5.165 million for the partial reduction of enrollment caused by the County's reduction in workforce.

30. Though MPERA's letter is styled as a "final administrative decision", there exists no administrative authority for MPERA to issue the partial withdrawal penalty and no procedure under the Montana Administrative Procedures Act for an administrative appeal. Consequently, all administrative remedies have been exhausted.

31. MPERA's actuary, Cavanaugh Macdonald Consulting, LLC, had determined that the partial withdrawal penalty attributable to these County employees amounted to an estimated \$4.5 million to \$5.165 million.

32. There exists no justification for MPERA's assessment of \$5.165 million as opposed to a different amount within the range offered by its actuary.

33. On January 9, 2020, Lewis & Clark County responded to the MPERB, by denying that the penalty was due and denying that MPERB had authority to assess the penalty.

34. On January 29, 2020, MPERB sued Lewis & Clark County in the Montana Supreme Court, which Petition the Supreme Court rejected on April 21, 2020.

35. Lewis & Clark County remains subject to MPERA's demand for \$5.165 million and has no assurances that MPERB will not undertake actions to collect on the claimed obligation. Though Lewis & Clark County disputes the amount assessed and MPERB's authority to assess, the County remains under the threat and uncertainty that MPERA claims a penalty due and owing.

VI. FACTS RELATED TO CASCADE COUNTY

36. In 1994, the Cascade County City-County Health Department opened a health center in Great Falls, Montana, operated as Community Health Care Center, Inc. ("CHCC").

37. In order to receive federal funding as a "Federally Qualified Health Center" in accordance with Section 330 of the Public Health Service Act, 42 U.S.C. Ch. 1, et seq.,

CHCC and Cascade County applied for funding as co-applicants. CHCC is a Federally

Qualified Health Center administered by CHCC's non-profit board which provided governance and administration to the health center. Cascade County provided, among other things, human resource services, employees, fiscal management, accounting, information technology services, and other general administrative services.

38. As Cascade County employees, the approximately 60 employees who worked at the CHCC were enrolled in PERS as is required for all local government employees.

39. In 2012, CHCC started operating as a separate department within the County with the long-term goal of becoming an independent agency. This was done, in part, because the federal agency providing grant funding discouraged partnerships with local governments and encouraged health clinics to move to a stand-alone non-profit model. It was also due in part to challenging governance issues and desires to be competitive in the ever-evolving healthcare marketplace.

40. In 2018, CHCC announced that it was ready to separate and requested Cascade County agree to relinquish the co-applicant agreement, permitting CHCC to announce their decision to separate and permit CHCC to begin operations as a stand-alone health center by December 31, 2018.

41. CHCC requested and expected that its employees would be permitted to continue participation in PERS, but the MPERB denied continued participation by formal decision dated September 21, 2018.

42. CHCC separated from the County on December 31, 2018, and its employees could no longer participate in the PERS system.

43. With no prior warning or indication, MPERA sent Cascade County a “final administrative decision” letter on November 7, 2019, demanding payment of a partial withdrawal penalty in the amount of approximately \$3,125,000 for CHCC’s separation.

44. Cascade County denies and disputes that a penalty is owed to Defendants and denies that Defendants have the authority to assess and collect such a penalty.

45. Though MPERA’s letter is styled as a “final administrative decision”, there exists no administrative authority for MPERA to issue the partial withdrawal penalty and no procedure under the Montana Administrative Procedures Act for an administrative appeal. Consequently, all administrative remedies have been exhausted.

46. Cascade County remains subject to MPERA’s demand for \$3.125 million and has no assurances that MPERB will not undertake actions to collect on the claimed obligation. Though Cascade County disputes the amount assessed and MPERB’s authority to assess, the County remains under the threat and uncertainty that MPERA claims a penalty due and owing.

COUNT I – DECLARATORY JUDGMENT
Montana Constitution Article VIII, Section 15

47. Plaintiff hereby incorporates in this section all prior statements and allegations as set forth in this Complaint.

48. Pursuant to Montana Code Annotated §§ 27-8-201 et seq., this Court may declare and adjudicate the respective rights, status, and other legal relations between the parties, whether or not further relief could be claimed.

49. MPERA has issued demands for payment of penalties pursuant to final

administrative decisions and without further administrative remedy.

50. Plaintiff requests a declaration that article VIII, section 15 of the Montana Constitution does not vest MPERB with the plenary authority to determine and collect alleged unfunded pension liabilities owed to the PERS as a result of partial withdrawals of employees or reductions in force.

51. A declaratory judgment or decree would terminate the uncertainty or controversy giving rise to these proceedings.

COUNT II – DECLARATORY JUDGMENT
Montana Code Annotated §§ 19-3-101 et. seq.

52. Plaintiff hereby incorporates in this section all prior statements and allegations as set forth in this Complaint.

53. Pursuant to Montana Code Annotated §§ 27-8-201 et seq., this Court may declare and adjudicate the respective rights, status, and other legal relations between the parties, whether or not further relief could be claimed.

54. MPERA has issued demands for payment of penalties pursuant to final administrative decisions and without further administrative remedy.

55. Plaintiff requests a declaration that Montana Code Annotated §§ 19-2-301 et seq. and §§ 19-3-101 et seq. does not vest MPERB with the plenary authority to determine and collect alleged unfunded pension liabilities owed to the PERS as a result of partial withdrawals caused by reductions in workforce.

56. A declaratory judgment or decree would terminate the uncertainty or controversy giving rise to these proceedings.

COUNT III – DECLARATORY JUDGMENT
1947 Contract and Similar Written Agreements

57. Plaintiff hereby incorporates in this section all prior statements and allegations as set forth in this Complaint.

58. Pursuant to Montana Code Annotated §§ 27-8-201 et seq., this Court may declare and adjudicate the respective rights, status, and other legal relations between the parties, whether or not further relief could be claimed.

59. MPERA has issued demands for payment of penalties pursuant to final administrative decisions and without further administrative remedy.

60. Plaintiff requests a declaration that the 1947 Contract, and all such similar agreements between counties and the MPERB or its predecessors, does not vest MPERB with the plenary authority to determine and collect allegedly unfunded pension liabilities owed to the PERS as a result of partial withdrawals caused by reductions in workforce.

61. A declaratory judgment or decree would terminate the uncertainty or controversy giving rise to these proceedings.

COUNT IV – INJUNCTION

62. Plaintiff hereby incorporates in this section all prior statements and allegations as set forth in this Complaint.

63. Plaintiff is likely to succeed on the merits of its claims that MPERB lacks constitutional, statutory, and/or contractual authority to assess withdrawal penalties occasioned by the loss of employees and reduction of enrollment in the PERS system.

64. Defendants have issued demands for millions of dollars of withdrawal

penalties against Montana counties, who carry the threat and uncertainty of collection actions on the disputed obligations, causing the counties uncertainty as to their administrative options in local governance.

65. The present dispute interferes with counties' local governance ability, options and authority.

66. For these and other reasons set forth herein, Plaintiff is entitled to injunctive relief, including a preliminary injunction pending a trial on the merits.

COUNT V – WRIT OF PROHIBITION

67. Plaintiff hereby incorporates in this section all prior statements and allegations as set forth in this Complaint.

68. A Writ of Prohibition arrests the proceedings of any tribunal, corporation, board, or person exercising judicial functions when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board, or person. Mont. Code Ann. § 27-27-101.

69. A Writ of Prohibition may be issued by the district court to any corporation, board, or person in all cases in which there is not a plain, speedy, and adequate remedy in the ordinary course of law. Mont. Code Ann. § 27-27-102.

70. MPERB is a tribunal or person exercising judicial functions and has proceeded without or in excess of its constitutional and statutory jurisdictional authority by issuing penalties upon Montana counties' reduction in workforce and reduction in enrollment from the State's pension plans.

71. There is no plain, speedy, and adequate remedy in the ordinary course of

law to protect counties from MPERB's extra-jurisdictional actions.

PRAYER FOR RELIEF

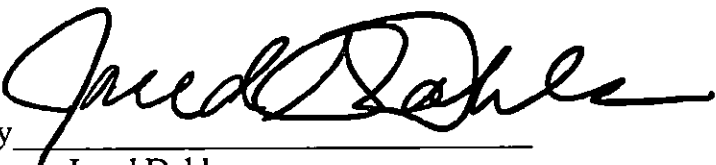
WHEREFORE, Plaintiff respectfully requests the Court for the following relief:

- A. For declaratory judgment that article VIII, section 15 of the Montana Constitution, Montana statutes, and contractual agreements do not vest MPERB with the plenary authority to determine and collect unfunded pension liabilities allegedly owed to PERS as a result of counties' reductions in workforce;
- B. For a preliminary and permanent injunction enjoining MPERB from assessing withdrawal penalties against Montana counties as a result of counties' reductions in workforce;
- C. For a Writ of Prohibition arresting MPERB from assessing withdrawal penalties against Montana counties as a result of counties' reductions in workforce;
- D. For all costs and attorneys' fees as provided for under Montana law, including as provided in Montana Code Annotated § 27-8-311; and
- E. For all other relief this Court deems just and proper.

DATED this 1st day of May, 2020.

Attorneys for Plaintiff MACo:

GARLINGTON, LOHN & ROBINSON, PLLP

By 
Jared Dahle